

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
In Admiralty
CIVIL ACTION NO. 4:09-CV-3

BENJAMIN G. HINES, JR.,)
Plaintiff,)
)
v.)
)
TRIAD MARINE CENTER, INC.)
dba BOATS UNLIMITED NC and)
JOHN BANISTER HYDE,)
Defendants)

AFFIDAVIT

I, Benjamin G. Hines, Jr., being first duly sworn, does depose and say:

I am a citizen and resident of Carteret County, North Carolina, I am over 21 years of age, under no mental disability and have personal knowledge of the facts set forth herein.

At the time of the accident of March 21, 2006 I was a medical doctor, licensed in the State of North Carolina and specializing in the field of urology. I practiced urology with Eastern Urological Associates in Greenville, North Carolina. I resided in Greenville, North Carolina and had a condominium at Olde Towne Yacht Club in Beaufort, North Carolina.

On Monday, March 20, 2006, I worked my regular schedule at Eastern Urological Associates. I planned to spend Tuesday, my day off, at my condominium in Beaufort. On Monday afternoon, while enroute to Beaufort from Greenville, I stopped at the business of Boats Unlimited NC on Highway 70, east of New Bern, as I was shopping for a new boat for my wife. My wife had a Jones Brothers skiff approximately 20 feet in length and we were looking for a boat that would be more comfortable to her. My wife and I had already tried out six (6) boats of similar size in the previous two (2) months in our search for a new boat for her.

At Boats Unlimited NC I met with John Bannister Hyde, a salesman for Boats Unlimited NC. I told Mr. Hyde that I was looking for a boat for my wife. I told him I was looking for a boat to replace a

flat bottom skiff, that I wanted a boat that was more comfortable and a drier ride than the skiff. I looked at 2 boats at Boats Unlimited NC. Both of the boats had v-bottoms. Mr. Hyde recommended the Triton model boat stating that since it was a heavier boat, it would be drier and wouldn't pound like the skiff would pound, that my wife would find it a more comfortable riding boat. I expressed a desire to take the Triton boat on a demonstration ride (sea trial) to see if this boat met my requirements. I advised Mr. Hyde that I would be available the next day, Tuesday, March 21, as it was my day off and that I would be at my condo in Beaufort.

It was agreed between Mr. Hyde and I, that Mr. Hyde would bring the boat to Beaufort for a demonstration ride the next day, which was Tuesday, March 21, 2006. We had agreed to meet at the dock at Olde Towne Condominiums at 2:00 p.m.

The next day, early in the afternoon, shortly after lunch, Mr. Hyde called and stated that he would be about an hour late as they needed to finish rigging the boat. He arrived at the dock at Olde Towne Condominiums sometime close to 3:00 p.m. with the Triton model 2286 boat that I had looked at the previous day at Boats Unlimited NC in New Bern. This boat had a center console type layout, it was 22 feet in length and was powered by a single 250 hp Yamaha outboard motor with an extra long shaft.

I went down to the dock and met with John Banister Hyde. A friend of mine, Neil Wagoner, who lived in the same condominium, also came down to the dock to look at the boat. Neil had previously purchased a Triton boat from Boats Unlimited NC. The boat he purchased was a different model and he was interested in the Triton 2286 and wanted to see how it performed. I had told him either the previous evening or that morning that Boats Unlimited NC was bringing the boat down to demonstrate it and he asked if he could come along and I agreed. Both Neil and I boarded the vessel at the Olde Towne Condominium dock. After inspecting the vessel we left the Olde Towne dock with the boat. On board the boat that time was John Banister Hyde, the salesman from Boats Unlimited NC, Neil Wagoner and myself. When we left the dock I was at the helm and operating the boat.

Olde Towne Condominiums is located on east side of Radio Island, just west of Pivers Island, where the Duke Marine Laboratory is located. Both Radio Island and Pivers Island are west of the town of Beaufort. Taylor's Creek, which abuts the south side of the town of Beaufort, flows past Olde Towne Condominiums. The portion of Taylor's Creek to the immediate south of the Olde Towne Condominiums is referred to as Bulkhead Channel. This channel on its southern end terminates in the Morehead City Channel. The Morehead City Channel runs from Beaufort Inlet to the Morehead City State Port. As you are heading down the Morehead City Channel towards the ocean the channel turns to the south in the vicinity of Beaufort Inlet. This portion of the channel is known as Cutoff Channel, Cutoff Channel on its southern end joins the Beaufort Inlet Channel.

When I left the dock at Olde Towne Condominiums I operated the boat in a southern direction through Bulkhead Channel. Upon reaching the Morehead City Channel I made a left turn and proceeded with the Morehead City Channel towards Beaufort Inlet. After making a left turn I powered the boat up until it reached a plane. In order to get the boat on a plane it had to be going over 20 miles per hour according to the boat's speedometer. I proceeded with the Morehead City Channel towards Shackleford Banks. As I reached the area known as Cutoff Channel I continued on towards the northern or sound side of Shackleford Banks. The course that I took did not take us through Beaufort Inlet. We remained north of the inlet. As we passed between Bogue Banks and Shackleford Banks in the inland waters you could see the waves in the inlet, which in my opinion were approximately 4 feet in height. The winds were blowing out of the northeast approximately 20 to 25 miles per hour.

After reaching the sound area, just north of Shackleford Banks, I drove the boat around making various turns to see how it handled. I noticed during my operation of the boat that the boat wanted to porpoise. By porpoise I mean that the bow of the boat tended to go up and down while the boat was on a plane. I attempted to trim the engine to eliminate the porpoising but was unable to do so. The boat did not have trim tabs. I advised John Banister Hyde that I did not like the way the boat handled because I could not keep it from porposing and the steering seemed stiff or hard to turn.

I turned the operation of the boat over to John while we were in the inland waters north of Shackleford Banks in the vicinity of the red nun buoy marking the jetty. I asked him to show me how to operate the boat as I thought maybe he could operate it in a manner so that it would not porpoise. When I turned the boat over to John Banister Hyde, I moved to his left and stood on the left side of the center console, holding onto the T-top frame. My left hand was on one of the upright frame for the T-top and my right hand was on a frame leading to the top. I was facing towards Mr. Hyde so I could see how he manipulated the controls, especially the trim.

Mr. Hyde powered the vessel up to a plane and we were heading from Shackleford in a westerly direction towards Morehead City. He was operating the vessel, in my opinion, in excess of 20 miles per hour. As we entered the eastern leg of the Morehead City Channel, Mr. Hyde, turned the vessel to the left towards the inlet immediately after passing green buoy number 19. This turn took the vessel out of the deep water of the ship channel into the shoal area. Immediately afterwards the vessel struck a large wave, the bow lifted suddenly and the vessel appeared to me to go airborne. I was thrown up in the air and my head struck the T-top. I thought I was going to be thrown out of the boat and I was holding on with all my strength. I remember holding on and then hearing, which was probably not a real sound but a feeling of the bone exploding and cracking as I impacted the deck.

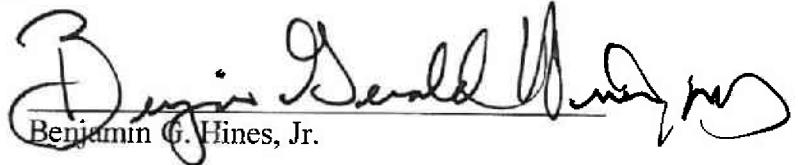
I ended up on the deck between the console and the port side of the boat with my head towards the bow of the boat. I immediately knew that my lower left leg was broken. I immediately became concerned as to whether it was a compound fracture or if I had sustained any cuts as I was on the blood thinner Coumadin.

I did not know that John Banister Hyde was going to attempt to take the boat out of the inlet. He did not tell me nor did he tell Neil Wagoner that he was going to do so. He did not tell us before making the turn that he was going to turn towards the inlet and I did not realize it until after he had made the turn. The incident happened so suddenly that I did not have time to object. Nor did John Banister Hyde at any time warn of the approaching wave. I could not see the wave conditions

immediately before his turn as I was facing towards him, observing his operation of the boat's controls and my back was toward the inlet.

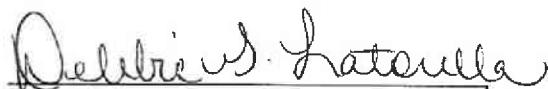
Since this accident I have been unable to return to my occupation as a medical doctor practicing urology due to the injuries that I have sustained and the medications that I take as a result of those injuries.

This the 15th day of January, 2010.



Benjamin G. Hines, Jr.

Sworn to and subscribed before me,
This 15th day of January, 2010.



Debbie G. Latorella
Notary Public

My Commission Expires: June 15, 2013

